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December 20, 2013

The Honorable Naomi Reice Buchwald
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 2270
New York, NY 10007-1312

Re: *Andrews et al. v. FremantleMedia N.A., Inc. et al.*, Case No. 13 CIV 5174

Dear Judge Buchwald:

We write to address the parties' obligations under Rule 26(f). Pursuant to Rule 26(f)(1), the parties telephonically met and conferred last week. In light of defendants' pending motion to dismiss, the parties agreed to submit a stipulation requesting that the Court defer the parties' Rule 26(f) obligations for 90 days, and plaintiffs agreed to draft such stipulation. In plaintiffs' counsel's own words, he did not see "the point in setting the dates" because defendants' pending motion raised a "couple of major threshold issues" and sought to dismiss the entire complaint.

Today, after defendants inquired when plaintiffs would circulate the proposed stipulation, plaintiffs informed defendants that they had changed their mind because "the pending motion to dismiss is meritless." Ex. A at 1. Plaintiffs thus take inconsistent positions—they insist on leave to amend in response to defendants' motion but also argue the motion is meritless. They cannot have it both ways.

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Notwithstanding plaintiffs' changed position, defendants maintain that it would be inefficient to require the parties to submit a joint report under Rule 26(f) at this time. Accordingly, defendants respectfully request that the Court hold the parties' Rule 26(f) obligations in abeyance for 90 days, at which time the parties and Court can reassess whether it makes sense for the parties to proceed with a Rule 26(f) report, or until the Court schedules a Rule 26(f) conference, whichever occurs earlier. Alternatively, to the extent this Court deems this request a motion, defendants respectfully request a pre-motion conference pursuant to Rule 2(B) of your Honor's individual practices.

Respectfully,



Daniel M. Petrocelli
of O'MELVENY & MYERS LLP
Attorneys for Defendants

cc: James H. Freeman, Esq. (counsel for plaintiffs)
Matthew S. Martin, Esq. (co-counsel for D. & T. Brittenum and C. Clark)
Steven T. Lowe, Esq. (co-counsel for C. Golightly)